

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

February 24, 2012

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on February 24, 2012.

Members present were Chairman Louis Stout, Barry Stumbo, Janice Meyer, James Griggs, Thomas Glover and Kathryn Moore (arrived at 1:08 p.m.). Member Noel White was absent. Others present were Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; Jim Marx, Zoning Enforcement; and Rochelle Boland, Department of Law. Staff members in attendance were Jimmy Emmons, Bill Saltee and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the November 18, 2011 meeting would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Griggs, and carried unanimously (White absent) to approve the minutes of the November 18, 2011 meeting.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
 - a. **C-2012-5: NEW HOPE IPC, INC.** - appeals for a conditional use permit to establish a church with accessory parking in a Single-Family Residential (R-1C) zone, on property located at 3021 Bates Creek Road. (Council District 4)

The Staff Recommends: Postponement, for the following reasons:

1. While some necessary public services and facilities are available to the subject property, such as police and fire protection and sewer infrastructure, not all necessary public facilities are available and adequate for the proposed use:
 - (a) Specifically, there is no provision for the collection of solid waste via dumpsters on the subject site, as recommended by the Division of Solid Waste. It is anticipated that some driveways and parking spaces shown on the submitted site plan will need significant revision in order for this required facility to be provided on the site in a manner where a service truck can safely maneuver internally on the site.
 - (b) The internal circulation recommended by the Division of Traffic Engineering and the geometrics of the property egress (exit) along Bates Creek Road require revision of the site plan. Ideally, this should be accomplished prior to any approval of this request, following review by the applicable agencies.

Ms. Clarissa Spawn, Glendover Neighborhood Association treasurer, 1909 Bellefonte Drive, was present to request a postponement of the subject appeal, stating that the neighborhood had not had adequate time to review and evaluate the effects of the church's proposal. She said they were a newly established neighborhood association that had not been added to the GIS map at the time this request was made; and consequently, they did not receive notification of this proposal. Ms. Spawn noted the staff's recommendation for postponement and provided some additional reasons for the requested postponement from the neighborhood association.

Mr. Richard Murphy, attorney, was present representing the church and stated that they were prepared to

go forward with this case today.

Chairman Stout said this case would be brought back toward the end of the agenda, after the staff made their comments relative to it.

- b. **A-2011-76: DAVID BENNETT / LEXINGTON GREEN** - appeals for an administrative review to allow a shopping center identification sign on a stone planter box that will project into the street right-of-way, in a Planned Shopping Center (B-6P) zone, on property located at 161 Lexington Green Circle. (Council District 9)

The Staff Recommends: Postponement, for the following reasons:

1. A determination needs to be made regarding the correct property that this appeal should be filed under. At the minimum, documentation is needed that the appellant has sufficient legal interest in the subject property to pursue the requested sign appeal. Alternatively, it may be necessary to amend the application and re-notice area property owners to include the property known as 3211 Nicholasville Road, which is not owned by the appellant.
2. There is some uncertainty as to whether or not the prohibition on signage projecting into a right-of-way can be waived by the Board. Further evaluation of this issue in consultation with the Department of Law is necessary.
3. Additional investigation is needed to determine the most appropriate manner that existing signage on the mall's property can be classified, and how that might relate to the potential for erecting an additional shopping center identification sign.
4. Depending on how these interrelated issues are resolved, it may be necessary to file a variance request to reduce the required sign setback to 0', which would give the appellant the opportunity to place the sign up to but not beyond the right-of-way boundary.

Mr. Emmons noted that the staff had received correspondence from the applicant requesting a withdrawal of the subject appeal. No action by the Board was necessary.

- c. **A-2011-80: CRESTWOOD CHRISTIAN CHURCH** - appeals for an administrative review to allow four directional signs to be placed on the church property, in a Single-Family Residential (R-1C) zone, on property located at 1882 Bellefonte Drive. (Council District 4)

The Staff Recommends: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

1. Under Article 17 of the Zoning Ordinance, directional signs are not a permitted type of sign in the R-1C zone, for any type of use.
2. The Board is not authorized to increase the number of permitted signs on a particular property, nor permit a design type that is not specifically permitted by Article 17 of the Zoning Ordinance for the zone where the sign is to be located.
3. The inability to erect directional signage is not considered to be a significant hardship for the church, and many other options are available that might assist them in their efforts to clarify access to and navigation around the church property. Further, they could apply for an amendment to the sign ordinance.

Mr. Emmons stated that the staff had received an e-mail indicating that the applicant wished to withdraw the subject appeal. Chairman Stout accepted the withdrawal.

2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- a. **V-2012-7: JUSTIN WEEKLEY** - appeals for a variance to reduce the required rear setback from 16.6 feet to 6 inches, in order to construct a carport in a Two-Family Residential (R-2) zone, on property located at 3974 Weber Way. (Council District 9)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. This neighborhood has a nice mixture of

homes with front facing garages, detached garages in the rear, and driveways without garages. There is not one dominant type of treatment throughout this neighborhood, and this proposed carport will not be out of character in this neighborhood.

2. The requested yard reduction is reasonable based on the topography of the site and the proposed storm water controls, which will ensure that the carport does not negatively impact the adjoining property at 3960 Weber Way.
3. Strict application of the Zoning Ordinance would force the appellant to either construct a new access point to Weber Way with a new driveway, or to do extensive grading work with retaining walls to place a carport in either of the side yards.
4. The circumstances of this request are not the direct result of actions taken by the appellant, but relate to how the property was developed many years ago, long before the appellant purchased the property.

This recommendation of approval is made subject to the following conditions:

1. The development shall take place in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division Building Inspection prior to any construction activity.
3. No part of the proposed carport, including roof overhangs, is to cross the property line.
4. Guttering will be installed on the carport to direct storm water away from the neighboring property and into the appropriate storm sewer system.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Justin Weekley, appellant, was present. He indicated that he had read, understood and would abide by the conditions for approval.

There were no questions or comments from staff or the Board.

Action - A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (White absent) to approve **V-2012-7: JUSTIN WEEKLEY** (a variance to reduce the required rear setback from 16.6 feet to 6 inches, in order to construct a carport in a Two-Family Residential [R-2] zone on property located at 3974 Weber Way) for the reasons provided by the staff and with the conditions as set forth by the staff.

- b. **C-2012-2: JEHOVAH'S WITNESSES TRUSTEES** - appeal for a conditional use permit to expand an existing structure, increase parking and add sidewalks in a Single-Family Residential (R-1B) zone, on property located at 400 Kingston Road. (Council District 6)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The minor changes proposed for the subject property will functionally improve the use of the property, and the additional parking will be fully landscaped from the adjacent roadways.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church facility shall be built and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response.

Representation – Ms. Cathy Kono was present on the appellant's behalf. She indicated that she had read, understood and would abide by the conditions for approval.

There were no questions from the staff or the Board.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore, and carried unanimously (White

absent) to approve **C-2012-2: JEHOVAH'S WITNESSES TRUSTEES** (a conditional use permit to expand an existing structure, increase parking and add sidewalks in a Single-Family Residential [R-1B] zone on property located at 400 Kingston Road) as recommended by staff and subject to the two recommended conditions.

- c. **C-2012-3: BRENDA TOLLETT** - appeals for a conditional use permit to establish an indoor recreational facility in a Light Industrial (I-1) zone, on property located at 741 Miles Point Way. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This site is well suited to handle the proposed indoor volleyball recreational facility.
2. All necessary public facilities and services, including police, fire and EMS, are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The indoor volleyball facility shall be built and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
3. Any food service provided shall remain accessory (i.e., incidental and subordinate) in nature, and shall be subject to review and approval by the Fayette County Board of Health.

Chairman Stout asked whether there were objectors present to the subject appeal. There was no response.

Representation – Ms. Brenda Tollett, appellant, was present. She indicated that she had read, understood and would abide by the conditions for approval.

There were no questions or comments from the Board or staff.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs, and carried unanimously (White absent) to approve **C-2012-3: BRENDA TOLLETT** (a conditional use permit to establish an indoor recreational facility in a Light Industrial [I-1] zone on property located at 741 Miles Point Way) for the reasons recommended by the staff and subject to the three conditions recommended by the staff.

- d. **C-2012-4: STEVE SNOWDEN** - appeals for a conditional use permit to extend the regulations of the Neighborhood Business (B-1) zone up to 50 feet into the adjoining Single-Family Residential (R-1C) zone in order to allow a bakery and retail sale of bakery goods, on property located at 1616 Liberty Road & 720 Henry Clay Boulevard. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

1. Granting this requested conditional use should not adversely affect the subject property or the surrounding neighborhood. In fact, this neighborhood shopping center has existed at this location for at least 60 years and is an asset to the surrounding neighborhoods. Extensive improvements have been made to the property in the recent past in order to ensure that it continues as such.
2. All public utilities and services are existing and adequate to support the requested use.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of the portion of the building zoned R-1C.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Steve Snowden, appellant, was present. He indicated that he had read, understood and would abide by the conditions for approval.

Mr. Emmons noted that the staff had received two letters with respect to this case -- one was in support, and the other was not actually relevant to the subject appeal. The Board reviewed the correspondence, after which the Chairman called for a motion.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover, and carried unanimously (White absent) to approve **C-2012-4: STEVE SNOWDEN** (a conditional use permit to extend the regulations of the Neighborhood Business [B-1] zone up to 50 feet into the adjoining Single-Family Residential [R-1C] zone in order to allow a bakery and retail sale of bakery goods on property located at 1616 Liberty Road and 720 Henry Clay Boulevard) for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

- e. **C-2012-6: KENTUCKY MANSIONS PRESERVATION FOUNDATION, INC.** - appeals for a conditional use permit to establish an historic house museum in the Agricultural Rural (A-R) zone, also in a Historic District (H-1) Overlay zone, on property located at 2650 Bowman Mill Road. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

1. Given its documented history, Helm Place is well suited for future use as a "historic house museum" for the benefit of the entire community.
2. The proposed conditional use does not adversely affect the subject or surrounding properties and will not cause a hazard or nuisance to the public. The nearest residential uses on adjoining or nearby properties are a considerable distance from the main residence on the property, and the proposed site improvements will enable safe traffic movements from Bowman Mill Road to the museum for its patrons and clientele. Trash pickup/disposal is available to the site and the sewer treatment (septic system) is privately provided. In addition, public services, such as police and fire protection, are available and adequate for the proposed use.
3. Provided the existing barn is not utilized, this conditional use will comply with the 10,000 square-foot limitation of Article 8-1(d) of the Zoning Ordinance for many non-agricultural conditional uses in this agricultural zone.

This recommendation of approval is made subject to the following conditions:

1. The proposed conditional use shall be conducted in accordance with the submitted application and site plan, allowing for any amendments necessary (including the need for pavement or other materials instead of gravel) in order to comply with the requirements of the Board of Architectural Review, and/or the preservation easement already in place under the Purchase of Development Rights program.
2. All necessary permits shall be obtained from the Divisions of Building Inspection prior to any construction or remodeling or occupancy of the residence as a museum. Any exterior modifications to principal or accessory buildings shall first meet the requirements of the Board of Architectural Review and/or its staff.
3. The parking lot shall be paved, if required by the Board of Architectural Review, and landscaped or screened in accordance with their requirements, as applicable.
4. The final design of the parking layout shall also be subject to review and approval by the Division of Traffic Engineering.
5. The existing septic field in place for the farm shall be subject to the review and approval by the Fayette County Board of Health for this new use.
6. All social "activities and events" conducted at this historic house museum must comply with any applicable easements and/or restrictions that are in place for Helm Place under the Purchase of Development Rights Program.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Richard Murphy, attorney, was present representing the Kentucky Mansions Preservation Foundation, Inc. He said this is the non-profit organization that operates the Mary Todd Lincoln House in downtown Lexington and, in the event of the Board's approval, will operate the Helm Place Historic House Museum. He briefly spoke about having secured the approval of the Rural Land Management Board and amending the Zoning Ordinance (with a text amendment) to allow historic house museums in the A-R zone, which was unanimously approved by both the Planning Commission and the Urban County Council. Mr. Murphy stated that they would have to go through the Board of Architectural Review if any alterations are proposed for this building. It was noted that

this property is in an historic district; it is listed on the National Register; and there is a conservation easement in place under the Purchase of Development Rights program. He said they applied for the historic house museum on 13+ acres of the 150-acre parcel, a part of which would be leased on a long-term basis to the adjoining Mill Ridge Farm.

Mr. Murphy acknowledged the staff's recommendation of approval and the absence of any objectors to the requested conditional use; however, he asked to discuss the staff's revised conditions, particularly #1 and #6, which he said were received prior to this meeting. With respect to the revised Condition #6, he said they understood the PDR office's ability to enforce their conservation easement on the 150-acre farm; however, the concern was that if a violation of the conservation easement occurred, which resulted from someone's action at Mill Ridge Farm on the portion of the property that is owned by the applicant but rented to Mill Ridge Farm, it potentially could lead to the revocation of the appellant's conditional use permit. He reiterated that the application for the historic house museum was for only 13+ acres of the 150-acre property.

Chairman Stout said he understood Mr. Murphy's point and asked to hear from the staff regarding the issue that was raised. Mr. Sallee responded that the staff made the revisions to the referenced conditions after a discussion with Mr. Van Pelt, Director of the Purchase of Development Rights (PDR) program. He said the staff didn't have any issue with making the change, but Mr. Van Pelt may want to address the Board as to whether that was significant or not.

Mr. Billy Van Pelt was present. He briefly spoke about the cooperative effort between the Rural Land Management Board and the KY Mansions Preservation Foundation to initiate the text amendment referenced by Mr. Murphy. With respect to the property in question, he said the issue is that the entire farm is subject to the Deed of Conservation easement; and that the Mansions Foundation will have deed to the entire farm, in which case the 13 acres no longer exists because it is one conservation easement. He said the language in the condition (#6) is needed because any social activities or events that occur anywhere on the 150-acre parcel, whether on the (requested) 13 acres or not, is subject to the conservation easement. He reiterated that 13 acres cannot be separated out of the conservation easement that is on the entire farm; and that the museum will get the deed to the entire farm.

Chairman Stout commented that the issue of concern was not so much the long-term lease situation; but rather, the possibility of the conditional use being revoked due to the action(s) taken by someone other than the applicant on the property that is subject to the conservation easement. Mr. Van Pelt responded that, ultimately, if there is a violation of the conservation easement, whether it relates to the house museum or not, they would have to deal with the issue at that time. Although the Chairman understood Mr. Van Pelt's position as well, he felt that some language was needed to protect the applicant from being penalized for something that may occur on the remaining portion of the property that would be leased to another entity.

Ms. Moore inquired about the action that would be taken in the event of a violation of the Deed of Conservation easement under the PDR program. Mr. Van Pelt replied that the matter would have to come back before the Rural Land Management Board, which holds the conservation easement and enforces it. He noted that this is the first step in the process. Ms. Moore commented that she wasn't quite sure why the conditional use permit should depend on whether or not all the property complies with it. Mr. Van Pelt said he understood that the requested conditional use has to do with the 13+ acres; but the concern with the condition under discussion (#6) is that they don't want these other types of activities happening on the rest of the farm.

Mr. Stumbo asked counsel to comment on whether the 13 acres could be separated out legally from the 150-acre parcel under the conservation easement. Ms. Boland felt that there were two ways to look at this. She said she didn't believe the Board had any authority over the acreage that falls outside of the application for the conditional use permit, citing the reference (in Condition #1) to the use being conducted in accordance with the submitted site plan. She said they could try to work out language that would specify that, with respect to the conditions for this conditional use within this acreage, the appellant must comply with any applicable restrictions of the Deed of Conservation easement.

Ms. Boland further stated that she understood the concern that was raised; but she didn't think a revocation of the permit for the conditional use would be appropriate if a violation of some kind should occur on the back portion of the property, for instance. She also said she didn't think that, legally, that

could be taken as a basis to revoke this conditional use permit. She stated that Mr. Van Pelt's concerns could be addressed by saying the Board (only) has authority over this site plan and this proposed use; and as to the other area, the appellant will be required to comply with the restrictions of the overlying easement, because with respect to the rest of the farm and this area as well, there is a remedy to bring them back before the (Rural Land Management) Board and find them in violation. However, she didn't think this Board had authority over anything but the property that is the subject of this application. She said Mr. Murphy wanted specification that the operation of this house museum must comply, within its parameters, with the same restrictions of the Deed of Conservation easement; however, he didn't want his client subject to someone else doing wrong on the rest of the property, over which they had no control or responsibility. She opined that it could be put in the conditions that all activities connected with this application must take place strictly upon the area defined in the site plan; and if the appellant did have activities outside that area, it could be a basis for revocation because that would be a violation of their conditional use permit.

Mr. Van Pelt commented that he still wasn't sure how you could have a site plan that designates and separates out 13 acres when it is one conservation easement on 151 acres. He said there were a lot of questions, in addition to which the Rural Land Management Board had not seen or reviewed the submitted site plan. He stated that if this issue could not be resolved (satisfactorily), he would respectfully request a postponement of the subject appeal until the Rural Land Management Board could evaluate it at their March 5th meeting.

Chairman Stout related the request for postponement to Mr. Murphy, who responded that they wanted to proceed today and were in agreement with what Ms. Boland stated to the Board about revising the language of the condition in question. He said they were not there to ask the Board's permission to violate the deed of conservation easement on the rest of the property, or to threaten the authority of the Rural Land Management Board over the conservation easement; and that their concern was that any social activities or events held on the remaining portion of the property that is leased (for the next 18 years) is not cause for revocation of the conditional use permit for the proposed house museum, particularly if they had nothing to do with the violation that occurred. He went on to say that they wished to apply for a conditional use on a portion of the property, which is not at all unusual for the Board to consider; and that they also have to comply with the Rural Land Management Board and the Board of Architectural Review. Mr. Murphy said he was proposing the deletion of the language referencing the entire 150+-acre farm.

Mr. Van Pelt reiterated his position that the 13-acre parcel doesn't exist any more, which he felt was the hitch here. It was Chairman Stout's feeling that this would fall between the applicant and the Rural Land Management group.

Ms. Boland opined that Mr. Murphy was correct, in that people will (can/do) come in and apply for a portion of their property to be used for a conditional use; and as the Board was well aware, there are instances where the property is split-zoned, and the applicant may not be able to have the use across that zoning line; and it doesn't make any difference that there aren't two lots there. She said the site plan designates the area to be used for the conditional use; and this Board has the right to restrict it to that area, without having to be divided off from the rest of the property.

Mr. Griggs asked Mr. Van Pelt about the PDR program and how it would deal with persons who violate the applicable restrictions, particularly in a lease situation such as this. Mr. Van Pelt said it was his understanding that the conservation easement was approved prior to the lease with the adjoining farm.

Mr. Griggs asked Mr. Van Pelt if he understood that the Board can permit conditional uses on portions of properties, citing the example of a home occupation in half of an applicant's garage and the proposed use being limited to that portion of the garage only. Mr. Van Pelt replied that he thought this was a unique situation.

At this time, the two amended conditions drafted by counsel were shown on the overhead and read by Mr. Sallee, as follows: Condition #1: The proposed conditional use shall be conducted in accordance with the submitted application and site plan, allowing for any amendments necessary (including the need for pavement or other materials instead of gravel) in order to comply with the requirements of the Board of Architectural Review. Only the property shown on the site will be used for this conditional use, and all activities on the site must comply with the Deed of Conservation easement already in place under the Purchase of Development Rights program. Condition #6: All

social “activities and events” conducted at this historic house museum on the site plan must comply with any applicable easements and/or restrictions that are in place for Helm Place under the Purchase of Development Rights Program Deed of Conservation Easement.

Chairman Stout asked if Mr. Murphy was in agreement with the two revised conditions, to which he replied affirmatively. Mr. Murphy pointed out that after the lease expires, if the foundation wants to expand its operation, they will have to come back to the Board to revise the conditional use permit.

Since there were no further questions or comments from the Board, the Chairman called for a motion.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Glover, and carried unanimously (White absent) to approve **C-2012-6: KENTUCKY MANSIONS PRESERVATION FOUNDATION, INC.** (a conditional use permit to establish an historic house museum in the Agricultural-Rural [A-R] zone, also in an Historic District [H-1] Overlay zone, on property located at 2650 Bowman Mill Road) with the conditions as set forth by the staff, including the amendment of Conditions #1 and #6 as stated herein.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

- 1. **V-2012-9: VILLAGE GREEN BUILDERS, LLC** - appeals for a variance to increase the maximum allowable width of a driveway for a two-car garage in the Infill & Redevelopment Area from 10 feet to 17 feet in a Two Family Residential (R-2) zone, on property located at 373 Preston Ave (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, provided the driveway width is mitigated with a decorative surface or landscaping to result in pavement of no more than two 8' driveways, rather than one continuous 17' wide driveway.
- b. Granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as 17' wide driveways are common in the community, and some exist in the defined Infill & Redevelopment Area.
- c. The special circumstance that is applicable to this property is the fire which destroyed the original residence. Replacement of that structure with an updated dwelling is somewhat unusual in this neighborhood, while much more common in others.
- d. Strict application of the Zoning Ordinance would limit the ability of the property owner(s) to access ½ of the constructed garage for parking vehicles.
- e. The circumstances of this variance request are not the result of the willful actions of the applicant. This home was issued a building permit, and the applicant built the structure in good faith. Only after it was constructed was the driveway mistake realized.

This recommendation of approval is made subject to the following conditions:

1. That the applicant obtain a Certificate of Zoning Compliance from the Division of Planning, prior to the issuance of a Certificate of Occupancy from the Division of Building Inspection.
2. At least one decorative area of at least one foot wide shall be installed in the center of the proposed driveway. In the alternative, the applicant may also choose to construct two or more grass strips along the length of the driveway, leaving tire runs for each of the two garage parking spaces. In either case, these decorative areas can consist of grass, landscaping, decorative pavers, or decorative rocks that will not wash into the public right-of-way.

Representation – Mr. Drew Brester, 1205 Passage Mound Way, was present for his application.

Opposition – Mr. William Jefferson, who along with his wife, are owners of property adjacent to 373 Preston Avenue, was present to object to this request. He said that the owners of 373 Preston Avenue had cleaned up the property, and he applauded their efforts, and in rebuilding a formerly distressed property.

Mr. Jefferson said that their concern was about drainage from the property at 373 Preston Avenue. This was because the home he and his wife own was one of the few in the area with a full basement. He was concerned that if the driveway was expanded, then there would be a drainage impact to his property, which was at a lower elevation. That is the reason they are opposed to the wider driveway, unless a wider drainage channel can be constructed. He submitted some photographs of their common property line for review by the Board. Chairman Stout asked if he thought the drainage from the driveway could be directed away from his house. Mr. Jefferson said that possibly, with the installation of curbing along the side of the driveway, or the installation of some corrugated pipe that might take the downspout drainage to the back yard.

The Chair asked the Board to review photos provided by Mr. Jefferson as they were placed on the overhead projector, some of which showed the slope from the subject property to his. He said that his property sat in a bowl, and that the water tended to drain into his rear yard. He also displayed some photographs of the rear of his property. He showed steps down from the street into his front yard.

Discussion – Chairman Stout said that the staff had recommended approval of this application, and asked Mr. Brester if he agreed with their recommendation and the conditions for approval. Mr. Brester replied that he had, he understood the conditions, and that he would abide by them. Chairman Stout asked if he understood his neighbor's concerns. Mr. Brester replied that he did. He said that the grade of the house he is building is also lower than the street, just as it is for Mr. Jefferson. He said that, since the photos had been taken, he had performed some additional work on the drainage. Since the drainage flows down the driveway from the street to the new house and the front of the garage, the driveway would be sloped to send the water in both directions. The drainage will be routed from the front of the house to the rear yard. His house appears to be higher, but the new house is built on a crawl space, so it only appears to be higher than Mr. Jefferson's home.

Chairman Stout asked the Division of Engineering for comment. Mr. Saylor said that an erosion and sediment control plan had been provided, and that it was as Mr. Brester had described. Chairman Stout asked where the water drains to. Mr. Saylor said that there were no detention basins in the area. Chairman Stout asked if this storm water would possibly drain on to other residential properties. Mr. Saylor replied that in an infill & redevelopment area such as this, that was possible. In a new development area, the water is captured and drains to a facility; but in this area, there are limited options for the storm water to go, and they are constrained as to where it could go. Chairman Stout said that it would not be fair to ask the applicant to construct a detention basin.

Mr. Brester said that the Ordinance allows a 10' wide driveway, and he was requesting one of 17' in width. He said that the house was only 20' from the street. Chairman Stout said that Mr. Jefferson's worry was about drainage, and asked if the curbing could be constructed along the driveway as he requested. Mr. Brester replied that it could not, as the water would then drain into his garage. Chairman Stout asked Mr. Brester if the water draining on to Mr. Jefferson's lot was irrelevant.

Discussion – Mr. Griggs said that he had seen homes where the water drained into a grate just in front of the garage, and then was channeled into the rear yard. He said that the water from the new home's gutters could be attached into this system, and all of it could be drained into the rear yard. Mr. Brester said that the drainage "would do that naturally" but he also agreed that that could be done to solve the problem.

Mr. Glover asked where the storm water drains presently. Mr. Brester replied that the water drains off the driveway into his front yard, or into the 8' side yard adjacent to Mr. Jefferson. Mr. Glover asked where the water drains from those locations. Mr. Brester replied that it then drains into the back yard. Mr. Glover asked if it would continue to do so. Mr. Brester replied affirmatively, as that would be consistent with his erosion control plan for the property.

Chairman Stout asked if he would be in agreement with the installation of the drain described by Mr. Griggs. Mr. Brester replied that he would not be opposed to that requirement. Chairman Stout asked Mr. Jefferson if he thought that would be of help to him. He replied affirmatively.

Mr. Griggs asked if that could be added as another condition. Mr. Brester replied that that would be acceptable. Mr. Emmons placed a condition on the overhead projector to this effect, which he read as follows:

"3. A drainage system will be installed in front of the garage to direct storm water away from the neighboring property and into the appropriate storm sewer system, or to the rear yard, to the approval of the Division of Engineering."

Chairman Stout asked Mr. Brester if he would be agreeable to this condition. He replied affirmatively. He asked Mr. Jefferson if he understood this requirement. He also replied affirmatively.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (White absent) to approve **V-2012-9: VILLAGE GREEN BUILDERS, LLC** – (a variance to increase the maximum allowable width of a driveway for a two-car garage in the Infill & Redevelopment Area from 10 feet to 17 feet in a Two Family Residential [R-2] zone, on property located at 373 Preston Avenue) for the reasons provided by the staff, and subject to the two original conditions recommended by the staff, adding the third condition offered during this hearing.

2. **V-2012-8: THOROUGHbred HOMES, LLC** - appeals for a variance to reduce the required front yard setback from 30 feet to 22 feet in order to allow a second-story addition to extend over the existing front porch in a Two-Family Residential (R-2) zone, on property located at 1203 Fincastle Road (Council District 5).

The Staff Recommends: Disapproval, for the following reasons:

- a. Justification has not been provided that specifically addresses and supports that this request will not alter the character of the general vicinity. As proposed, approval of this variance will alter the immediate character of the neighborhood because the front yards, along with the fact that a majority of the homes have a one-story covered front porch, are some of the fundamental characteristics that give this neighborhood much of its form.
- b. The applicant has not provided a justification indicating that there are any special circumstances that apply to this property that do not generally apply to others in the surrounding neighborhood. Although the shape of this lot is unusual compared to most lots in Fayette County, it is actually a typical lot in the Ashland Park neighborhood.
- c. If additional living space is desired, a rear addition would not likely be as character altering with this architecturally established neighborhood. This deep lot could accommodate such an addition.

Mr. Emmons said that the staff had received four letters about this application, and he distributed those to the Board at this time.

Representation – William Wood was present on behalf of Thoroughbred Homes, for this property at 1203 Fincastle in Ashland Park. Chairman Stout said that the staff had recommended disapproval of this request for three reasons. Mr. Wood said that he had additional information that the staff did not have available to them. He provided two elevations for the Board to review, and they were placed on the overhead projector for all to view.

Mr. Wood said that the neighborhood is an older one, and there are many large open spaces in Ashland Park. He said that there is a small dormer in the center of the house, and they were requesting a variance in order to add about 454 square feet above the home's existing porch. The dormer is currently 3.5' above the porch.

Mr. Wood said that the reason they proposed the addition to the front of the house is due to the fact that the lot is pie-shaped, and there is not as much room to the rear of the lot. On the right side of the lot, there is only 2' between the house and the side lot line, which is non-conforming. Mr. Wood said that they are not enclosing the porch, and they are not reducing the front yard dimension. They were hoping

to keep the open space in the existing back yard for the future residents of the home. In addition, in the rear yard, there is a large tree that they were hoping to maintain, since it was healthy. He said that on the first floor level, there is a stairwell that was constructed in 1927 with the house. The stairwell allows for a good flow throughout the house, and that is why they elected to try to "go up and not out" with this home addition.

Mr. Wood said that he had received one call from a neighbor, asking how the house would look with the planned addition to the second floor. Mr. Wood said that the property was not in either the H-1 or ND-1 overlay zones. He did see that this was an older neighborhood, though, and this is one of many bungalow style homes. He said that there are several two-story apartment buildings in the area, where the second floor goes straight up from the first floor – many of which are within two blocks of this home. There are even some four-car concrete garages in the area, which just demonstrated the diversity of this neighborhood.

Mr. Wood said that they made a conscious effort to develop a strong design for the addition to this house, given the neighborhood. He displayed the front elevation of the house on the overhead projector. He said that the front dormer would be 2.5' back from the front of the porch. There would be 21" overhangs on the roof lines, in order to maintain the bungalow appearance. Their goal was to improve the appearance of the property, and be an asset to the neighborhood. He requested that the Board approve this variance so that they could accomplish their goals.

Questions – Chairman Stout said that the staff, in its report, stated, "the applicant has not provided a justification indicating that there are any special circumstances that apply to this property that do not generally apply to others in the surrounding neighborhood. Although the shape of the lot is unusual compared to most lots in Fayette County, it is actually a typical lot in the Ashland Park neighborhood." He asked Mr. Wood to provide his justification for this request. Mr. Wood replied that they had purchased the home in order to sell it. However, the upstairs living space was very minimal. He displayed a photo of the interior of the upstairs, at the top of the stairway. He said that their plan was to have a master bedroom, a bathroom, a laundry room and another bedroom on the second story of this home. The staircase was existing and was to allow access to these new spaces.

Chairman Stout asked if there was an intention to add another dwelling unit to this structure. Mr. Wood replied that there was no such intention, and that it would remain a single family home. He showed photographs of a four-plex in Ashland Park, and that their intent was to modernize the home, and bring it up to its potential. He said that, along with new landscaping in the front, it would beautify the neighborhood. Chairman Stout asked if they would be leasing, selling or renting the home, and Mr. Wood replied that they would sell it when finished. He supplied a photograph of the concrete, four-car garage he mentioned earlier, to illustrate the architectural diversity in this neighborhood.

Mr. Wood said that the tree in the rear yard is about 60 years old, and that they did not wish to remove it. In order to build an addition off the rear of the structure, they would have to cut down that tree. They also wanted to keep the existing green space, if at all possible.

Chairman Stout asked if Mr. Wood was aware that the Historical Society was totally against his proposal. Mr. Wood replied that they were opposed because they did not know how it would look. He said that it was not zoned either H-1 or ND-1. Chairman Stout asked if they had reviewed his design. Mr. Wood replied that they had not. Chairman Stout asked if Mr. Wood thought it appropriate for them to review this building design. Mr. Wood replied that he thought that they would have been at this hearing if they had wanted to view his design. In fact, he had told Dixie Moore that he had hoped she would appear at today's meeting, so that she could review his final design for this house. They had discussed several designs, and that is why they settled upon this one shown at this meeting.

Staff Report – Mr. Emmons presented the Staff Report to the Board. He said that the staff never requested an elevation from the appellant. He said that the Ashland Park neighborhood has several pie-shaped lots, such as the subject property. With all the different housing types in the neighborhood, there is consistency with the front setbacks in Ashland Park. He said that where there were smaller front yards, they were so because of a front porch projection, such as currently on the house on the subject lot, and not because of a two-story projection, as is being requested with this variance. This request for a front yard variance to 22' is not justifiable, and would be out of character with the rest of this neighborhood.

Discussion – Chairman Stout asked how the appellant could come into compliance with their addition. Mr. Emmons said that if additional living space is desired, then it would be more appropriate to locate it to the

rear of the house. Their site plan indicates a rear porch already on the back of the house. Chairman Stout then asked if the setback would need adjustment by the Board. Mr. Emmons replied that the front setback would not, but he wasn't sure if a side yard variance would be necessary or not.

Chairman Stout asked Mr. Wood to comment on the staff's suggestion. Mr. Wood replied that the dormer on the house today is not much different, but the main difference is that the addition is taller. He was confident that their design proposal was in keeping with the area. The downside to a rear addition was that the existing tree would need to be removed, and a side yard variance would likely be required. He said that the house is only 2' off the line. He said that the Neighborhood Association was worried that the front porch would be enclosed, which was not their plan. He said that the rear yard tree was large, it was healthy, and it was not diseased. He showed a photo of the tree and of the rear yard, saying that they hoped to keep the rear yard open space on the lot. He said that a rear addition would also impact the stairwell that would serve the 450 square-foot addition planned for the property. He thought that the home, if expanded, would sell to a family with older children, and that it would make a nice home.

Mr. Glover said that the setback was required to be 30', but the porch extends to within 22' of the sidewalk. Mr. Wood said that the porch is 10' in width; and that at one corner of the house, it is 35' from the sidewalk and at the other corner, it is only 32.5' from the sidewalk. He said that their dormer would only extend 7.5' or 8' from the wall of the house. They would then be 3.5' behind the front of the porch. The dormer would be larger, and 4' closer to the sidewalk than the existing dormer. He said that they did listen to the community, and would agree to keep this home as a bungalow style house. He added that the house has some maintenance issues, which they also proposed to address with their planned renovations, which will take 6-9 months, at least, to complete. He said that they take their time to "do things right."

Chairman Stout said that he did not have a problem with Mr. Wood's plan, but he was troubled that he did not take his design to the Historical Society for their review. They have a great deal of influence in historic neighborhoods, such as this one. He thought that this plan would be somewhat detrimental to the neighborhood, and felt that Mr. Wood should work with the neighborhood and the staff to develop an alternative plan that would garner their support.

Mr. Wood said that he had assumed Ms. Moore would be in attendance, as she had indicated to him that she represents a number of neighbors in the area. He asked if this case could be postponed so that he could meet with the neighborhood, and try to find some middle ground. Chairman Stout asked the staff if they objected to Mr. Wood's request. Mr. Saltee only asked that the Board continue this hearing, rather than postpone it.

Chairman Stout said that he thought this was a good idea, and he urged the Board to accept a continuance of this hearing. He urged him to meet with the staff and the engineers in order to resolve the issues. Mr. Wood said that a picture is worth 1,000 words, and he hoped that the neighbors would be agreeable with his latest design.

Chairman Stout asked Mr. Wood to review the recommendation he read earlier, and to try to address that issue at such future time as this case might return to the Board. Mr. Wood agreed to do so.

Mr. Griggs said that he did not want Mr. Wood to return to the Board filled with optimism. He said that he still had several concerns about this application, and that he was not sure that his concerns could be adequately addressed. He did not oppose a continuance, but he did not see any "special circumstances" that apply to this property. Mr. Wood replied that Ms. Moore had told him that their concerns were that the porch not be enclosed, and that the yard area would not be reduced. Mr. Griggs said that there appeared to be considerable opposition to this request, and that he was worried about the precedent this might set for the neighborhood.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer and carried unanimously (White absent) to continue **V-2012-8: THOROUGHbred HOMES, LLC** to the next meeting of the Board.

D. **Conditional Use Appeals**

1. **C-2012-5: NEW HOPE IPC, INC.** - appeals for a conditional use permit to establish a church with accessory parking in a Single-Family Residential (R-1C) zone, on property located at 3021 Tates Creek Road. (Council District 4)

The Staff Recommends: Postponement, for the following reasons:

1. While some necessary public services and facilities are available to the subject property, such as police and fire protection and sewer infrastructure, not all necessary public facilities are available and adequate for the proposed use:
 - a. Specifically, there is no provision for the collection of solid waste via dumpsters on the subject site, as recommended by the Division of Solid Waste. It is anticipated that some driveways and parking spaces shown on the submitted site plan will need significant revision in order for this required facility to be provided on the site in a manner where a service truck can safely maneuver internally on the site.
 - b. The internal circulation recommended by the Division of Traffic Engineering and the geometrics of the property egress (exit) along Bates Creek Road require revision of the site plan. Ideally, this should be accomplished prior to any approval of this request, following review by the applicable agencies.

Mr. Sallee noted the staff's revised recommendation with respect to the findings under reason "a", which was distributed to the Board. He said this is a future dumpster location at issue; and it is not currently recommended by the Division of Solid Waste that this applicant have dumpster service.

The Staff Recommends: Postponement, for the following reasons:

- a. While some necessary public services and facilities are available to the subject property, such as police and fire protection and sewer infrastructure, not all necessary public facilities are available and adequate for the proposed use:
 1. Specifically, there is no provision for the collection of solid waste via dumpsters on the subject site, ~~as recommended by the Division of Solid Waste~~. It is anticipated that some driveways and parking spaces shown on the submitted site plan will need significant revision in order for this ~~required~~ future facility to be provided on the site in a manner where a service truck can safely maneuver internally on the site.
 2. The internal circulation recommended by the Division of Traffic Engineering and the geometrics of the property egress (exit) along Bates Creek Road require revision of the site plan. Ideally, this should be accomplished prior to any approval of this request, following review by the applicable agencies.

Mr. Emmons said three letters in opposition were received by the staff, which he submitted to the Board for review.

Since there was opposition expressed earlier to this appeal, the Chairman asked if the objector wished to comment further; and if so, to come forward at this time.

Opposition – Clarissa Spawn, 1909 Belefonte Drive, was present to object to this appeal. She said that she was present to represent her neighbors in opposition, but they had not had much time to review this proposal. She said that her previous comments outlined her objections.

Joseph Marnolitch, 3013 Shirley Court, was present to object to this appeal. He said that he lived 300 yards from this site, and that he was concerned with traffic, parking and congestion in this area. Chairman Stout asked Mr. Marnolitch that if those concerns could be rectified if he would still be in opposition. Mr. Marnolitch said that he would be, because the larger places of worship are on the opposite side of Bates Creek Road; and that once they locate on the west side of the road, then that would only lead to further congestion, so he would still be in opposition to the request.

Questions – Mr. Griggs said that the opposition and the staff were both requesting postponement; the Board should probably give that some consideration. He asked if the Board should continue this case to another time. Chairman Stout asked if the staff was still recommending postponement. Mr. Emmons replied that the staff would not oppose a postponement of this request.

Mr. Stumbo said that one of the letters indicated that the neighbors had not been notified of this case. He asked if the timetable for the notice had been met. Mr. Sallee replied that the staff would check the file to see when the notices were sent. He said that the property owners within 400' were mailed in a timely fashion. He said that the opposition letters may be referring to the notice letters sent out as a courtesy to neighborhood associations. He said that Ms. Spawn mentioned earlier that this is a new neighborhood association, and they do not even appear on the latest LFUCG map of neighborhood associations. For that reason, the notice letter sent to this new neighborhood association was mailed out later than usual.

Chairman Stout said that the Board should determine whether to continue this hearing to another date. He asked Ms. Boland for her advice. Ms. Boland said that when the issue is whether to postpone an application or not, it would be prudent for the Board to consider the point of view of the appellant before deciding the issue.

Appellant's Presentation – Richard Murphy, attorney, was present on behalf of the appellant. He asked the Board to consider the reason the church wished to be heard at today's meeting. He said that the appellant had satisfied the two reasons for which the staff had recommended postponement. He said that a dumpster would not be needed at this location, and that they had modified their access to resolve the concerns of the Division of Traffic Engineering.

Mr. Murphy said that the notice was proper to the 25 property owners, and none of those letters had yet been returned to the staff. Mr. Murphy said that the lease on the space that the church is currently renting is set to expire on March 31st. If this were to be postponed, then the Board's next meeting is March 30th; and if they were to approve the request, the church could not possibly move out in only one day. He said that then, the church would need to negotiate a month-to-month lease with their landlord, which he is not required to do.

Mr. Murphy said that the church members were present to speak to their application, and the church has made efforts to remedy the issues. He said they were ready to present those remedies to the Board.

Discussion – Chairman Stout asked the staff if they had reviewed this information. Mr. Sallee replied that the staff had not. To complete the answer to Mr. Stumbo's earlier question, he said that the 23 notice letters to the 25 property owners within 400' of the site were mailed, and none had been returned.

Ms. Meyer said that the Glendover Neighborhood Association was newly formed, and that they had not received notice. Ms. Spawn replied that Mr. Sallee had told her that the notice letter was sent as a courtesy, and she had not realized that. She said that one of the reasons they formed an association was that there was interest in receiving more notification of issues in their area, such as the Greek Orthodox Church application. She added that she was informed of this appeal by a neighbor living on Rebecca Drive. She received the formal notification after she informed Mr. Sallee that their association had not been notified by mail. They received the mailing about 7-8 days prior to today's meeting. Her association had not had time to meet to consider this proposal. She said that the lots in this area are large so there are not a lot of people that have received notification of this request.

Ms. Meyer asked if the neighborhood association believed it would be impacted by this change. Ms. Spawn replied strongly that they would. She said that the size of the church now is fine; but in their neighborhood, churches don't remain that way for very long. She said that she hoped they could trust that this church would do so, but their neighborhood doesn't have the traffic calming methods to deal with the added traffic that this church might bring to their neighborhood. She did not know if there were drainage issues with this proposal, and the lay of the property in relation to the neighbors that adjoin the site.

Mr. Sallee said that neighborhood notices were mailed to Shadeland and Southern Heights on February 8th and to Glendover on February 16th.

Chairman Stout said that the Board should consider whether to postpone this case or not. Ms. Meyer said that the Board had some unanswered questions, dealing with traffic and dumpsters, and she would favor a postponement. Mr. Griggs agreed, saying that while it might be an inconvenience to the church, that might be easily resolved with the church's landlord. He felt that these issues were too important to rush through, and not fully consider.

Mr. Glover said that there were only two issues mentioned; one was an issue with the adequacy of the notice and the second was about the details regarding trash collection. Mr. Sallee added that there were internal site circulation issues as well. Mr. Murphy replied that the circulation issues had been resolved with their revised site plan. Mr. Murphy said that there was not a need to provide dumpster service for this church.

Mr. Murphy said that all notification requirements had been met for this application. He said he had heard 1½ weeks ago that some people had not received formal notification of this request, yet somehow knew of the scheduled hearing. He said he did not want the concern of them not having a letter addressed to

them to overshadow the fact that they knew about this hearing. These individuals notified the staff that they had not received a letter, and then were mailed a letter. The staff had provided his contact information to these individuals, yet Mr. Murphy said that he had received no contact from the neighborhood association prior to today's hearing.

Chairman Stout asked Mr. Murphy to show cause as to why the application should be decided upon today; otherwise, the Board may be inclined to postpone this case. Mr. Murphy said that he was in agreement with the Chair's ruling.

Appellant's Presentation (cont.) – Mr. Murphy said that he had some exhibits to distribute to the Board at this time. He said that he represented New Hope – Independent Presbyterian Church. Ms. Rachel Brooks, pastor, was in attendance, as were Ed Clark, President; Bennett Clark, church member; Jim Black, Engineer; and Chas Hite, AICP, planner.

Mr. Murphy said that the church was asking for a conditional use permit for the existing house located at 3021 Tates Creek Road. He said that the house would not be torn down, and that their new sanctuary of 40 seats would be in the house. He claimed that this would be an extremely low impact development. The existing circular drive in front of the house will be maintained, and the off-street parking would be off that drive, and would constitute the only added pavement on the site.

Mr. Murphy reviewed the site plan for this 1.1-acre property on the overhead projector. He said that they had a revised plan for the property, and the only access to the site is from Tates Creek Road. The off-street parking will be located between the house and the existing drive. The access will be "one entrance only" and "one exit only" points, with a one-way drive aisle. Mr. Murphy said that the house is about 3,300 square feet in size, and that the half-basement is about 1,700 square feet in size. He said that house is well suited for the church's worship space, office needs and Sunday school spaces.

Mr. Murphy said that the church, by keeping the house and not demolishing it, would be keeping the architectural pattern in this area. He said that the church has a number of options if they grow, including holding multiple services at this location each weekend; or the church could split, and form another church at another location. He said that the church could also sell this property and move, as it could still be utilized as a single family home in the future. This church does not aspire to be a mega-church.

In regard to dumpster services, Mr. Murphy said that the Division of Solid Waste had told the church that they prefer to serve them with Herbies and not with dumpsters. Pastor Brooks had told Mr. Murphy that on the typical Sunday, the church generates enough trash to fill 1-3 13-gallon garbage bags. She said that they are conservation conscience, and typically do not utilize disposable cups very often.

Mr. Murphy said that the church had taken the staff's advice and revised the parking layout and revised their site plan. He said that this site is across the road from the largest church in the county, but they had staggered hours with Immanuel Baptist Church. He said that Immanuel's services were at 9:00 & 10:30 AM, and at 5:30 PM. New Hope IPC's worship service would be held at 11:00 AM and their Sunday school would begin at 10:00 AM. Mr. Murphy said that Pastor Brooks had reported that many members do not leave until around 1:00 PM, as many members visit after their services conclude. He said that the church would not have either a day care center or a school at this location.

Mr. Murphy said that he had compared their application with that of the Greek Orthodox Church on page 2 of his Exhibits packet. He did not mean to criticize the Greek Church application, but he did want to compare the New Hope IPC application to it, as one staff member had said the Greek Church request was the smallest church construction project he had ever seen. Mr. Murphy said that the Greek Church was on 1.3 acres, was for 19,450 square feet, and was removing a house to allow its construction. He said that it was four times the size of their church. In addition, they needed a variance to allow their off-street parking, and the New Hope Church did not.

Finally, Mr. Murphy said that this church, unlike the Greek Orthodox Church, was not putting traffic out onto Rebecca Drive. He said that many home construction projects would have more of an impact than that what would result from the New Hope project. He said that the 10 additional spaces would be the only impact to the area. Likewise, a dumpster would have been also, had it been required by the Division of Solid Waste.

In conclusion, Mr. Murphy said that this church would constitute a very, very low impact development, and he requested the Board's approval of their conditional use permit. He said he understood the neighbors

concerns, but they hoped the facts would be of interest to all in attendance at today's hearing.

Opposition (cont.) – Julian Beard, 809 Glendover Road, and 4th District Councilmember, was present to speak to this appeal. Mr. Beard said that Mr. Murphy had pointed out the difference in the two churches, but he asked what would happen when the third church was proposed in this area. He would be concerned that there would be a number of small churches on Bates Creek between Rebecca Drive and Albany Road.

Mr. Beard said that the notification to this new neighborhood was not handled well internally by the LFUCG, and that their "courtesy" notification was every bit as valid as the standard 400' notification. He said that because the lots in this area are 190' deep, fewer people had an opportunity to receive notice about this application. Thus, the notice becomes "diluted" because of the large size of the lots in the area.

Mr. Beard said that he had received numerous phone calls about this application from residents up and down Bates Creek Road—especially about "what is next." He believed that the growth of the church is a concern as well, as he had not yet met a congregation that did not wish to grow and expand. In particular, he said that the church has a Boy Scout troop, which is one way of growing a congregation. He said that in the future, this would allow new people to be exposed to this church.

Mr. Beard said that his constituents had not felt that they had had time to understand the full scope of this application. He suggested that a postponement would allow time for a dialog to occur between the applicant and the church. He said that he did not understand why this church would want to limit their growth so substantially, especially by providing only 12 parking spaces. Being hamstrung in this fashion didn't make sense to him.

Staff Report – Mr. Emmons said that the Planning staff does not wish to circumvent the recommendation of the Division of Solid Waste. Instead, the staff is concerned about the need for a dumpster at this location following growth of this congregation. This is to be a low impact development, but there is significant problem in locating a dumpster on the property, and this site plan simply "would not work" for such a facility. The internal circulation on the property is improved, but the northern entrance was initially to be a right-in/right-out entrance, which was a problem. He displayed an aerial photograph of the two entrances, and said that the staff would rely upon the Division of Traffic Engineering's recommendations on the site circulation. He said that if the Board were inclined to approve this case today, the staff, with the help of the Law Department, could come up with some conditions for approval.

Ms. Spawn asked what options the neighbors would have in the event that the church wished to expand in the future. Chairman Stout replied that the church would have to come back to the Board to seek that approval. Ms. Spawn asked if that would be in the form of another conditional use permit. Chairman Stout replied in the affirmative.

Mr. Sallee placed the notice requirements on the overhead projector.

Questions – Mr. Griggs said that the staff recommendation was that the traffic configuration should be worked out prior to the Board's approval. He asked Traffic Engineering if they concurred, or if they are satisfied with the parking arrangement now shown. Mr. Gallimore replied that his concern had been that church members might try to back out on to Bates Creek Road. He said that the parking is being located on the outside radius of the existing drive, instead of as originally proposed. However, he said that he first saw that proposal a few minutes earlier, when it was displayed for review by the Board. He said that it would have been far better for the revised site plan to have been submitted in advance for review by the staff ahead of time. Mr. Gallimore said that the entrance and exit shown do not work for the existing driveway, and that still concerns him. This would have been better resolved ahead of time, instead of "springing" it on the staff.

Mr. Griggs said that the opponents are also concerned about the increase in traffic onto Bates Creek Road, and said that it appears to be miniscule. He asked if Mr. Gallimore concurred. Mr. Gallimore responded that, as far as traffic counts go, this church would hardly make a difference, especially given the other churches that exist in this corridor. He said that 10-11 parking spaces would not make a difference along the corridor, even if the roadway does not function well on Sundays at the present time. Although there is a "point of saturation" in traffic, he had not heard arguments to that effect for Bates Creek Road until the Greek Orthodox Church proposal was presented.

Mr. Griggs asked about the traffic coming from town to this location, and then having to U-turn to head back to town. Mr. Gallimore said that a U-turn is not a bad turning movement, if there are good sight distances. Some access management theories encourage right-in/right-out access points such as what is being requested here. His concern was the change in this property from residential to a more commercial use. Without any on-street parking, there is not room for many more parking spaces on this site. As few as 10 parking spaces can be unsafe, if not laid out in an appropriate manner. He thought that the removal of the three spaces along the driveway might be an improvement to their site plan.

Chairman Stout asked Mr. Murphy about the Traffic Engineering recommendation regarding their off-street parking, and asked about the time between church services for the churches on Bates Creek Road. Mr. Murphy replied that the church services for Immanuel Baptist Church were at 9:00 and 10:30; but the appellant's Sunday school begins at 10:00, and the church service is to begin at 11:00. He felt that the critical time for traffic on Bates Creek Road is when the services end, and people are leaving. He said that Pastor Brooks had told him that most of their congregation does not leave until about 1:00 PM, as they often visit with one another after the service ends. The members of Immanuel Baptist Church would ordinarily have left before the New Hope Church had ended.

In regard to Mr. Gallimore's comments, Mr. Murphy said that they had shown a pavement radius on the end of their driveway to allow cars to exit toward Bates Creek Road. Mr. Gallimore said that what was shown "looked tight." He suggested that it might need to be increased.

Mr. Murphy said that the church currently has only 16 members, but they are planning some growth. He said that many of them would be arriving to this church from Mt. Tabor Road, and turning on to Bates Creek Road for a short distance.

Mr. Stumbo asked if Ms. Boland had prepared findings for the Board. Ms. Boland displayed them on the overhead projector for viewing by all in attendance. Mr. Saltee said that the staff had prepared three conditions for approval, should the Board wish to consider them. Ms. Boland said that she did not have any problem with the findings for approval submitted by Mr. Murphy. She said that the staff had assisted her in drafting the conditions for approval. Mr. Murphy's findings, and the conditions offered by Ms. Boland and the staff were as follows:

"Proposed Findings and Conclusions Approving C-2012-5: NEW HOPE IBC, INC.

Based upon the evidence presented to us, this Board does hereby approve the Application of New Hope IBC, Inc. for approval of a Conditional Use Permit to utilize the property at 3021 Bates Creek Road as a church and this Board adopts the following findings and conclusions:

1. Churches and Sunday Schools are allowed Conditional Uses in the single family residential (R-1C) zone. The subject property is located in the R-1C zone at 3021 Bates Creek Road.
2. Utilization of this property as a church and Sunday school will not harm the public health, safety or welfare and will not impair the integrity and character of this zone or adjoining zones because all traffic will enter and exit the property off of Bates Creek Road; traffic will not be introduced onto the neighborhood residential streets. Other than addition of a few parking spaces, there will be minimal change to the property, thus the Church will not create any storm water issues. The property and the existing building are large enough to handle the proposed Church use. Since the building will remain, the architectural pattern or the neighborhood will not be altered. This use is consistent with the Greek Orthodox Church recently approved to the north, and the three churches immediately across Bates Creek Road.
3. All public facilities which are needed are already available and adequate at the site. This property has direct access to Bates Creek Road. The sanitary sewer and all public utilities are already available and in use at this site, as the property is currently the site of a single family house. Fire and police protection are excellent, as this property is located within the Urban Service Area of Lexington-Fayette County."

"Conditions for approval – New Hope IPC, Inc.

1. The proposed conditional use shall be conducted in accordance with the submitted application and site plan, or as amended in accordance with recommendations of the Division of Traffic Engineering.
2. All necessary permits shall be obtained from the Division of Planning and Building Inspection prior to issuance of a certificate of occupancy.
3. If at any time it is determined by the Division of Solid Waste that a dumpster is required, the appellant must return for approval of an amended site plan showing an acceptable dumpster location. If no acceptable location can be created on this site, the conditional use permit shall be null and void.
4. Additional paving, only as necessary to facilitate traffic safety and movement, shall be permitted subject to the review and approval from the Division of Traffic Engineering. A paving permit shall be obtained prior to the addition of paving on the property for the church use.
5. Any new outdoor lighting shall be of a shoebox (or similar) design, with light shielded and directed downward, away from adjoining residential properties.
6. The existing access points to Bates Creek Road shall be modified, subject to the approval of the Division of Traffic Engineering and the KY Transportation Cabinet, as follows:
 - a. The northern entrance shall become an entrance only for the church.
 - b. The southern entrance shall become an exit only for the church.
 - c. The southern entrance may be widened, only with the approval of Traffic Engineering and the KY Transportation Cabinet."

Mr. Stumbo said that he understood the neighbors' concerns about the row of churches up and down Bates Creek Road, especially in light of the approval of the Greek Orthodox Church nearby. He said that in comparing it to this one, the retention of the existing home on the subject property was an important deciding factor in this case.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Glover, to approve **C-2012-5: NEW HOPE IPC, INC.** – (a conditional use permit to establish a church with accessory parking in a Single-Family Residential [R-1C] zone, on property located at 3021 Bates Creek Road) for the reasons provided by Mr. Murphy, and subject to the six conditions recommended by the staff.

The votes on the motion were as follows:

Ayes: Glover, Moore, Stout, Stumbo

Nays: Griggs, Meyer

Absent: White

The motion for approval carried, 4-2 (White absent).

E. **Administrative Review**

There were none.

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time.

Mr. Stumbo asked if the staff could provide a report on the hours attained in training by the Board members. Mr. Saltee agreed to do so in the near future.

Chairman Stout thanked Ms. Boland for her legal counsel, and said that he was very grateful for her assistance.

V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time.

- A. **House Bill 55 Training Opportunity** - There will be an APA audio-conference in the Division of Planning Conference Room on Wednesday, March 14, 2012, beginning at 4:00 p.m. and lasting until 5:30. The title of this conference is "Urban Agriculture and Food Systems Planning" and will count toward 1.5 hours of House Bill 55 training credit for

Board of Adjustment and Planning Commission members, as well as staff.

VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be March 30, 2012.

VII. **ADJOURNMENT** - Since there was no further business, the Chairman asked for a motion to adjourn the meeting.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously (White absent) to adjourn the meeting.

Louis Stout, Chairman

James Griggs, Jr., Secretary